801; *Williams* v. *Thacker Coal Co.*, 44 W. Va. 599, 30 S. E. Rep. 107, 40 L. R. A. 812. Similarly it has been held that a ship owner is not liable for injuries arising from the fault of a compulsory pilot. *Homer Ramsdell Co.* v. *La Compagnie Generale*, 182 U. S. 406, 21 Sup. Ct. 831, 45 L. Ed. 1155; *Crisp* v. *Steamship Co.*, 124 Fed. 748; and that a city is not liable for default of a contractor when it is compelled to let contracts to the lowest bidder. *James* v. *City of San Francisco*, 6 Cal. 529, 65 Am. Dec. 526. The Federal court refused to follow these cases but adopted the rule as laid down in *Consolidated Coal Co.* v. *Seniger*, 179 Ill. 370, 53 N. E. Rep. 733, and *Riverton Coal Co.* v. *Shepherd*, 207 Ill. 395, on the theory that the certificate of the examiners was mere prima facie evidence of competency. This case was differentiated from those in which the master is compelled to employ a certain individual. Here he may choose from a class. This class, if the examinations are properly conducted, must embrace all the competent men in the profession. The mine owner would be restricted to the employment of such men for mine managers even at common law.

MUNICIPAL CORPORATIONS—LIABILITY FOR NEGLIGENCE OF AGENTS.—Plaintiff brought an action for damages for injuries to his intestate, a laborer working for the Board of Water Commissioners on an enlargement of defendant's reservoir. The defendant contended that in prosecuting such work it was performing a public governmental duty and hence was not liable. *Held*, that the city, in carrying on such work, was not performing a public governmental duty so as to exempt it from liability for the negligence of its agents, the Board, and those acting under them. *Hourigan* v. *City of Norwich* (1904), — Conn. —, 59 Atl. Rep. 487.

The powers of a municipal corporation are of a two-fold nature; first, those which it exercises as an agent of the state and which are governmental in character and, second, those which it exercises as a private corporation. The general rule may be stated that for damages resulting from the exercise of the first class of powers it is not liable. ELLIOTT ON MUNICIPAL CORPORATIONS, § 301. Its liability resulting from the second class is based on the rules fixing the liability of private corporations. The work being done on the Norwich reservoir was work which would result for the corporate benefit and profit, and under such circumstances the city is liable. *District of Columbia* v. *Woodbury*, 136 U. S. 450. It was such work as does not primarily rest upon a municipality and work carried on by a board which was not a part of the necessary machinery for the performance of governmental functions. In carrying on the trade in water the city stands in the relation of an owner of private property. A statement of facts very similar to those found in the principal case is found in *Pettengill* v. *Yonkers*, 116 N. Y. 558, in which case the city was held liable for the negligent acts of the Board of Water Commissioners in failing to protect the public from trenches dug in extending the water service.

NUISANCE—CONTINUANCE—DAMAGES.—Plaintiffs claim to be the owners of certain lands situated on Deer Lodge river, below defendant's concentrating, smelting and reduction plant. They pray judgment for deprivation of the use of the waters for domestic purposes for five years, for destruction

of their crops for same time, for permanent injury done their land, and for an injunction. *Held,* the damage to the land would be the difference in the market value before and after the injury. *Watson et al.* v. *Colusa-Parrot Mining & Smelting Co.* (1905), — Mont. —, 79 Pac. Rep. 14.

The defendant alleges the prescriptive right to commit the acts above stated. No right can be acquired by custom or prescription to cast debris into a stream to be carried down and deposited upon the property of a lower riparian proprietor to his injury. *People* v. *Gold Mining Co.,* 66 Cal. 138, 56 Am. St. Rep. 80. The injury for which damages are sought arose from individual acts of different mine operators. And it is a rule of law that damages must result as the natural and proximate effect of the wrongful act charged. *Bristol Mfg. Co.* v. *Gridley,* 28 Conn. 201. This being so the defendant is liable to plaintiff for whatever damage it caused, and not for that produced by the acts of others regardless of the difficulty of determining what part of the damage is occasioned by the acts of each. *Sellick* v. *Hall,* 47 Conn. 260. The damage to the land would be the difference in the market value of the premises before and after the trespass. *Sweeny* v. *Mont. Cent. Ry. Co.,* 19 Mont. 163, 47 Pac. Rep. 791.

PLEADING—COMMON COUNTS—CODE.—Defendant, upon the solicitation of a member of the faculty of Columbia University, agreed to, and did furnish and equip with the necessary apparatus, a hydraulic engineering laboratory at his own expense. The gift was, at the request of the donor, designated a memorial to his father. The equipment of said laboratory was furnished by the plaintiff, a corporation, of which defendant was president and owned a large amount of stock. In an action against defendant for the value of the equipment, plaintiff declared upon a common count. The trial court held, that under the code a recovery could not be had upon a common count. *Held,* error. *Henry R. Worthington* v. *Worthington* (1905), — N. Y. —, 91 N. Y. Supp. 443.

In discussing the spirit of the code procedure, Mr. Pomeroy, in his REMEDIES AND REMEDIAL RIGHTS, §§ 75, 544 (§§ 15, 438, 4th ed.), observes that New York jurists were originally divided as to the intent of the Legislature relative to pleading under the code. The first view, which did not survive, was that the Legislature intended to abolish only certain names and certain technical rules of mere form. The second view, which is now firmly established, was that the pleader must narrate in plain and concise language the actual facts from which the rights and duties of the parties arise, and not his conception of their legal effect. "And yet," he says, "with great inconsistency, as it seems to me, the courts have generally held that the ancient forms of common law pleading in assumpsit may be used in actions upon contract, especially where the contract is implied; that they sufficiently meet the requirements of the codes, although they do not set out the actual facts of the transaction from which the legal right arises." This reasoning appears flawless, but the courts have not been disposed to follow it. That there is no abatement of the practice in New York is illustrated by the principal case, and elsewhere, by the following recent cases: *Johnson-*